

DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2004-18793] - 2

RIN 2127-AJ39;

Federal Motor Vehicle Safety Standards;

Child Restraint Anchorage Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Response to petition for reconsideration, correction.

SUMMARY: In August 2004, NHTSA denied a petition for reconsideration of a final rule amending Federal Motor Vehicle Safety Standard No. 225, Child Restraint Anchorage Systems. The denial made impermissible the installation of stowable anchorages on or after September 1, 2004. In response to a petition from Mercedes-Benz U.S.A., today's document provides manufacturers until March 1, 2005 to achieve non-stowability of the anchor system.

DATES: The amendments made in this rule are effective [insert date of publication of this document in the FEDERAL REGISTER].

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to:

Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, D.C., 20590.

FOR FURTHER INFORMATION CONTACT:

For nonlegal issues: Michael Huntley, Office of Crashworthiness Standards, NHTSA (telephone 202-366-0029).

For legal issues: Deirdre R. Fujita, Office of the Chief Counsel, NHTSA (telephone 202-366-2992).

You can reach both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

SUPPLEMENTARY INFORMATION:

On August 11, 2004, NHTSA published a final rule (69 FR 48818; Docket No. 18793) that provided the last of a number of planned responses to petitions for reconsideration of final rules establishing and amending Federal Motor Vehicle Safety Standard (FMVSS) No. 225, "Child restraint anchorage systems" (FMVSS No. 225, 49 CFR §571.225).¹ FMVSS No. 225 requires new vehicles to be equipped with child restraint anchorage systems consisting of two lower anchorage bars and a top tether anchor. Among other matters, the August 11, 2004 document denied a petition for reconsideration from Keiper GmbH & Co. (Keiper) to allow the installation of stowable lower anchorage bars past August 31, 2004.

NHTSA denied the request to allow stowable anchorage bars on a permanent

¹ The final rule establishing FMVSS No. 225 was published March 5, 1999 (64 FR 10786, docket 98-3390, notice 2). NHTSA responded to petitions for reconsideration of the final rule in documents published August 31, 1999 (64 FR 47566; Docket No. 6160), July 31, 2000 (65 FR 46628; Docket No. 7648), June 27, 2003 (68 FR 38208; Docket No. 15438; corrected 68 FR 54861), and August 11, 2004 (*supra*).

basis out of a concern that a general use of these anchorage systems might impede efforts to achieve maximum compatibility between child restraint systems and the vehicle anchorage system. NHTSA acknowledged that stowable anchorages were being used by DaimlerChrysler on limited models (69 FR at 48821).²

On September 7, 2004, Mercedes-Benz U.S.A. (MBUSA) submitted a petition for reconsideration of the decision on the Keiper petition. MBUSA asked for an extension of time, to March 1, 2005, to comply with the agency's directive that lower anchorages cannot be stowable. MBUSA stated that its C-Class, CLK-Class and Maybach models are equipped with stowable anchorages and that the changes necessary to make their anchorages non-stowable (described below) will take until March 1, 2005 to implement, even when using the fastest possible implementation schedule. The manufacturer also stated that there have been no consumer complaints about the stowable system, which led MBUSA to believe that there would be no adverse safety consequence to extending the date to March 1, 2005.

Agency Decision

In a notice of proposed rulemaking that proposed to establish a new Federal motor vehicle safety standard mandating tire pressure monitoring systems (69 FR 55895, September 16, 2004, Docket 19054), NHTSA clarified some of the implications of submitting petitions for reconsideration of final rules. That discussion warrants repeating here. The agency carefully reviews the petitions it receives before deciding the appropriate response to a petition. While petitions are pending, the final rule is effective

² DaimlerChrysler AG is the parent corporation of Mercedes Benz U.S.A. LLC.

as originally promulgated. Manufacturers cannot assume that the agency will make the changes requested in their petitions. Accordingly, they must plan to comply with the final rule as issued, without reservation.

To allow manufacturers to do otherwise would be contrary to the public interest. The effective date of a final rule, and the societal benefits associated with it, cannot be delayed by the mere filing of petitions for reconsideration.

At the same time, NHTSA recognizes that it has a responsibility to provide a timely response to petitions. In the case at hand, the agency did not respond to the petition for reconsideration until only three weeks remained in the period during which the stowable anchorages were allowed. Further, in denying the petition, NHTSA did not assess the difficulty MBUSA would have in making its anchorages non-stowable at that late juncture.

In light of this, NHTSA has decided to allow vehicle manufacturers until March 1, 2005 to make necessary design changes and cease use of stowable anchorages. MBUSA stated in its petition that it has sought to make its anchorages non-stowable in the quickest time possible and that it cannot immediately achieve non-stowability of the anchorages. MBUSA said that it considered simply locking the anchorages in the extended position, but found this to be unfeasible because a portion of the anchorage is large enough to make use of the rear seat by adult occupants extremely uncomfortable. The manufacturer also considered locking in place smaller "attachment clips," but found this too to be unfeasible because the smaller clips did not provide sufficient clearance for a child restraint fastener to extend fully over them. MBUSA believes that it must develop a new child restraint attachment assembly. The manufacturer stated that it needs to

develop new tooling for the anchorage, change the tooling for the cross-member and produce a new welding tool. It also has to reduce the following aspects of production to the shortest amount of time: the technical clearance of design of the new anchorage assembly; feasibility testing; parts ordering; sample checking; manufacturing process; and delivery to the assembly line. MBUSA stated that the necessary modifications cannot be implemented before March 1, 2005.

The agency believes that the only quick fixes MBUSA could develop proved unworkable. Because a rapid fix is not available, MBUSA is expediting the development of a new child restraint attachment assembly. Extending the deadline to March 1, 2005 fairly implements the denial of the Keiper petition. Accordingly, the deadline is extended to March 1, 2005.

Correction

Although the August 11, 2004 denial of Keiper's petition intended to prohibit the installation of stowable anchorages past September 1, 2004, it is not evident from the regulatory text of FMVSS No. 225 that stowability of the anchorages after that date (which has been changed to March 1, 2005 by this document) is impermissible. To make that impermissibility clearer, the agency is adding a provision to S9.1.1 that specifies that the anchorage bars on vehicles manufactured on or after March 1, 2005 must not be stowable (i.e., foldable or otherwise stowable).

Effective Date

The agency is making today's amendment effective on publication. This final rule provides a 6-month period to meet the requirement that lower anchorages not be stowable. MBUSA could not now sell the three models of vehicles that have stowable

lower anchorages if the amendments were not effective on publication. NHTSA thus finds for good cause to make this amendment effective in less than 180 days.

Rulemaking Analyses And Notices

a. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This document simply provides manufacturers (and MBUSA is the sole manufacturer using stowable bars) some time to render their lower anchorage bars non-stowable. Stowable anchorages have been permitted for a number of years and have not been used on a widespread basis. Vehicle manufacturers are unlikely to begin installing stowable bars in vehicles that do not now have them knowing that their installation would only be allowed until March 1, 2005. Based on our review of the potential impacts of this action, we have determined that this action is not significant within the meaning of the Department of Transportation's regulatory policies and procedures. We have further determined that the effects of this rulemaking do not warrant preparation of a full final regulatory evaluation.

b. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. This rule affects motor vehicle manufacturers, almost all of which are not small businesses. Even if there are motor vehicle manufacturers that qualify as small entities, this rule will not have a significant economic impact on them because it generally does not change the manufacturers' responsibilities

to install non-stowable child restraint anchorage systems pursuant to FMVSS No. 225. This rule just provides more time in which to make stowable lower bars non-stowable. Accordingly, the agency has not prepared a regulatory flexibility analysis.

c. Executive Order 13132 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rulemaking will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Accordingly, NHTSA has determined that this rulemaking does not contain provisions that have federalism implications or that preempt State law.

d. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. This rulemaking does not impose any unfunded mandates as defined by that Act.

e. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA)(Public Law 104-113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or

activities determined by the agencies and departments.” The August 11, 2004 final rule addressed the NTTAA regarding NHTSA’s decision to deny Keiper’s petition on installing stowable anchorages on a permanent basis. There are no technical standards relating to the specific issue addressed by today’s document.

f. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

g. Executive Order 12778 (Civil Justice Reform)

This rulemaking does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

h. Paperwork Reduction Act

This rule does not contain any collection of information requirements requiring review under the Paperwork Reduction Act of 1995 (Public Law 104-13).

i. Viewing Docket Submissions

You may read the submissions received by Docket Management at Room PL-401,

400 Seventh Street, SW., Washington, DC, 20590 (telephone 202-366-9324). You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

You may also see the submissions on the Internet. Go to the Docket Management System (DMS) Web page of the Department of Transportation (<http://dms.dot.gov/>).

Anyone is able to search the electronic form of all submission received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

List of Subjects

49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as set forth below.

PART 571 - FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.225 is amended by adding S9.1.1(d) and republishing S9.1.1(e).

The added and republished paragraphs read as follows:

§571.225 Standard No. 225; Child restraint anchorage systems.

* * * * *

S9.1.1 The lower anchorages shall consist of two bars that—

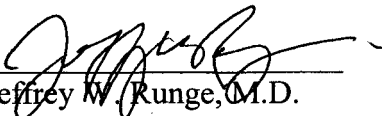
* * *

(d) For bars installed in vehicles manufactured on or after March 1, 2005, the bars must not be capable of being stowable (foldable or otherwise stowable).

(e) [Reserved]

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Issued on OCT 5 2004



Jeffrey W. Runge, M.D.
Administrator

Billing Code: 4910-59-P

[Signature page, MBUSA petition, RIN 2127-AJ39]